



NATALIE A. HUBLEY  
PRESIDENT

COMMONWEALTH AUTOMOBILE REINSURERS

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## RECORDS OF MEETING

### COMPLIANCE AND OPERATIONS COMMITTEE – NOVEMBER 7, 2018

#### Members Present

Mr. Jerry Sleeper – Chair  
Mr. Harris Berenson <sup>(1)</sup>  
Ms. Erin Cummings  
Mr. Harold Gerbis <sup>(2)</sup>  
Ms. Melissa Harmon <sup>(3)</sup>  
Mr. Robert Littlewood  
Mr. Kenneth Olivieri  
Mr. Barry Tagen

Safety Insurance Company  
The Hanover Insurance Company  
The Norfolk & Dedham Group  
Quincy Mutual Group  
MAPFRE U.S.A. Corporation  
Arbella Insurance Company  
J.K. Olivieri Insurance Agency, Inc.  
Pilgrim Insurance Company

#### Substituted for:

<sup>(1)</sup> Mr. Christopher Taylor

<sup>(2)</sup> Mr. Thomas Harris

<sup>(3)</sup> Mr. Bruce Dodge

#### Not in Attendance:

N/A

#### 18.01 Records of Previous Meeting

The Committee unanimously voted to approve the Records of the Compliance and Operations Committee meeting of October 18, 2018. The Records have been distributed and are on file.

#### 18.04 Informational Items

Ms. Wendy Browne informed the Committee that the commercial Servicing Carrier Focus Audit results discussed at the previous Compliance and Operations Committee Meeting will be discussed at the November 8, 2018 Commercial Oversight Committee. She anticipates that recommendations resulting from audit observations and the two committee's discussions will be provided to the Commercial Residual Market Standards Subcommittee for consideration.

#### 18.05 Compliance Audit Program

Mr. Mark Alves presented Hybrid Audit results for MAPFRE Insurance Company. Ms. Melissa Harmon of MAPFRE recused herself from participating in this agenda item. For sampled policies, the audit scope included \$769,380 in written premium. Associated loss dollars, including paid losses and allocated loss adjustment expenses, totaled \$804,491. MAPFRE was compliant to all statutory requirements and CAR Rules and had excellent data quality pertaining to quota share and rate making. The Committee unanimously accepted the audit report without further consideration.

## **18.07 Private Passenger and Commercial Statistical Plans**

Ms. Marian Adgate reviewed proposed modifications to the Commercial Statistical Plan to add a new Massachusetts Operations Identification Code for policies effective January 1, 2020 and subsequent. The proposed code will be used to identify the percentage of miles driven in Massachusetts by Public Autos and Trucks, Tractors, and Trailers. The Committee unanimously voted to recommend to the Governing Committee approval of the proposed Commercial Statistical Plan pages as presented. It was noted that CAR is considering a special call to collect similar data from Servicing Carriers for the 2018 and 2019 effective years. CAR anticipates providing formatted spreadsheets with the applicable policy and vehicle information.

Ms. Adgate also presented updates to the Out-of-State Territory Codes for both the Private Passenger and Commercial Statistical Plans to include the states of New Jersey and Pennsylvania, effective January 1, 2020. The Committee unanimously voted to recommend to the Governing Committee approval of the proposed Private Passenger and Commercial Statistical Plan pages as presented.

Finally, Ms. Adgate presented proposed modifications to the Private Passenger and Commercial Statistical Data Quality Penalty Programs to include the Distributional Analysis Program. The effective date of the proposed modifications is January 1, 2019. The Committee unanimously voted to recommend to the Governing Committee approval of the proposed Commercial Statistical Plan pages as presented.

## **18.10 Claims Subcommittee**

Mr. Peter Bertoni provided an overview of the proposed language changes to the Private Passenger and Commercial Performance Standards as recommended by the Claims Subcommittee. Upon conclusion he noted that the Subcommittee approved the changes offered by staff with a minor revision but postponed action in order to revisit the addition of a reference to medical fee databases proposed during the 2015/2016 review.

During the prior biennial review, the Claims Subcommittee recommended that references permitting the use of medical fee databases and FAIR Health specifically be included in Standard III No-Fault Personal Injury Protection Benefits Handling. The Compliance Audit Committee modified the reference to FAIR Health, in particular, by replacing the reference with the use of medical fee databases in general. After a public hearing, the Division of Insurance concluded that the current Performance Standards provided adequate tools for determining usual and customary charges and disallowed the reference to the use of 'medical fee databases' in the May 2016 Decision and Order.

At the July 25, 2018 meeting, the Claims Subcommittee began an effort to build a record that would support a similar recommendation in the current review. Staff was directed to conduct an industry survey addressing the questions raised during the January 2016 hearing. Subcommittee members provided questions that considered medical fee database usage and past legal challenges and staff worked with the Subcommittee Chair to finalize the survey. Survey responses were provided by 31 companies writing private passenger and/or commercial business. At the October 25, 2018 meeting, the Subcommittee reviewed the survey responses and had extensive discussion regarding overbilling by medical providers, database usage as a deterrent, FAIR Health, and past and current court outcomes. After discussion, the Subcommittee unanimously voted to recommend that the reference to medical fee databases be added to Standard III and submitted for reconsideration by the Division of Insurance.

Upon completion of Mr. Bertoni's overview of each recommended change, the Committee Chair Mr. Jerry Sleeper directed the Committee's attention to the wording of the May 31, 2016 Order that the current Standards provide adequate tools for investigating usual and customary charges for the purpose of negotiating PIP claims. He reviewed the records of the Claims Subcommittee meetings including a

memorandum compiled by staff that summarized the considerations and outcome of the prior review. He asked the Committee if anything has changed regarding the use of medical fee databases since the prior recommendation and questioned whether CAR had established a defensible position to the current recommendation. He noted that the Claims Subcommittee members agreed that the Standards do not currently preclude the use of medical fee databases and that this was supported by the survey. Furthermore, the courts have taken issue with the underlying data compiled in the databases, and past and present court decisions have been unfavorable to the industry in its usage. Mr. Sleeper also referenced the Subcommittee record regarding comments from CAR counsel relative to the purpose of the biennial review to promote the best interest of the residual market and not a tool for a subsequent legal proceeding.

Mr. Barry Tagen agreed that he had some concern regarding the recommendation. He referenced that the survey responses indicated that the use of medical fee databases for usual and customary considerations varies substantially among companies from not using at all to reviewing 100% of all medical bills. He believes the Standard as written allows for usage and to add language specifically referencing medical fee databases is unnecessary. He further commented the broad wording that includes historically utilized techniques as well as innovative approaches sufficiently permits usage and this ultimately becomes the carrier's decision. Also, the Committee shouldn't set a precedent by adding a tool for the purpose of strengthening a legal position. Although he agreed the survey was a start towards developing a supportive record, he questioned whether it decisively supported the proposed modification and whether it was in the best interest of the industry to bring this recommendation to the Governing Committee or the Division Insurance at this time. Mr. Robert Littlewood commented in favor of specifically identifying medical fee databases in the Standards. He questioned why if usage is currently not precluded and used by many companies as supported by the survey then usage should be specifically included in the Standards.

After discussion, the Committee voted, with six members in favor and one opposed, to accept the amendments to the Private Passenger and Commercial Performance Standards with the elimination of the reference to the use of medical fee databases, and recommend that the Standards be adopted by the Governing Committee and forwarded to the Commissioner of Insurance for approval.

#### **18.14 Impact of Registry System Changes**

Ms. Browne provided the Committee with an overview of data quality issues related to the migration of the Massachusetts Registry of Motor Vehicle ALARS system to the new ATLAS system. This transition occurred in late March 2018. She noted that since the conversion of license data, many companies have experienced a variety of reporting issues including those related to inaccurate Driver Training Status, inaccurate aging of youthful operators from one classification to another more experienced classification, and missing or inaccurate data for out-of-state operators. As a result of these data issues and the subsequent increase of errors identified by the Rule 29 Credit Edit System, CAR responded by freezing the error rate to be constant since the February 2018 cycle. While the error rates have begun to marginally improve, CAR is still working with the companies and the Registry to resolve these issues. Ms. Browne indicated that she anticipates providing a more specific plan to address lingering problems and overall data quality at the next meeting.

MATHEW HIRSH  
Compliance Auditor & Specialist

Boston, Massachusetts  
November 12, 2018

**ATTACHMENT LISTING**

Docket #COPC18.02, Exhibit #5

Attendance Listing

COMPLIANCE AND OPERATIONS COMMITTEE MEETING  
 SIGN-IN SHEET

Wednesday, November 7, 2018

Individual's Name

Company / Agency

PLEASE PRINT

Individual's Name	Company / Agency
PETER BRETONI	CAR Staff
MARK ALVES	CAR
Jerry Sleeper	Safety
Wendy Brown	CAR
Steve Torres	TSHD CAR Counsel
Tiana Hildgate	CAR
Kenneth Olivieri	J.K. Olivieri Ins Agency
Barry Taton	Pilgrim
Harold Gerbis	Quincy Mutual
HARRIS E. BERENSON	THE HANOVER INS. GROUP
Bob Dittewoods	ABELLA
Erin Cummings	N&D
Melina Harmon	MAFRE Ins.
Matt Arsh	CAR
Liana Passacantando	Amica
Leandro Rodrigues	Point Ins
Lynne Rosenberg	CAR
JAMES ROBERTY	CAR
Alison Ruggiero	CAR
Virginia Plesse	CAR
Dipak Lamsal	CAR